

ORIGINAL COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 67

THEODORE ROMAIN THOMPSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR CERTIORARI FILED APRIL 17, 1947.

CERTIORARI GRANTED JUNE 9, 1947.

No. 10928

United States
Circuit Court of Appeals
For the Ninth Circuit.

THEODORE ROMAINE THOMPSON,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Idaho
Eastern Division

INDEX

[Clerk's note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amended Praecepte	50
Appeal:	
Bail Bond on	35
Certificate of Clerk to Transcript of Record on	52
Notice of	33
Order Releasing Defendant on Bail Pending	39
Order Extending Time for Filing Transcript of Record on	48
Order for Transmission of Original Exhibits on	49
Praecepte, Amended	50
Statement of Points on (DC)	50
Statement of Points and Designation of Record on (CCA)	53
Assignment of Errors	40
Bail Bond on Appeal	35
Bill of Exceptions	43
Certificate of Clerk to Transcript of Record on Appeal	52

Index

Page

Designation of Record, Statement of Points and (CCA)	53
Indictment	2
Judgment and Sentence	4
Minutes of Court, Oct. 23, 1944—Plea of Not Guilty	3
Names and Addresses of Attorneys of Record	1
Notice of Appeal	33
Order Extending Time for Filing Transcript of Record on Appeal	48
Order Extending Time for Settling and Fil- ing Bill of Exceptions	42
Order for Transmission of Original Exhibits...	49
Order Releasing Defendant on Bail Pending Appeal	39
Praecipe, Amended	50
Statement of Points on Appeal (DC)	50
Statement of Points and Designation of Rec- ord on Appeal (CCA)	53
Supersedeas—Order	35
Transcript of Proceedings and Testimony...	6
Instructions to the Jury	29

Index

Page

Witnesses for Defendant:

Cox, Doris

—direct 28

Thompson, Theodore Romaine

—direct 24

—cross 27

Witnesses for Plaintiff:

Beechy, Orin

—direct 18

—cross 20

Razum, Helen

—direct 8

—cross 11

Verdict 4

Proceedings in U. S. C. C. A., Ninth Circuit. 55

Order of submission 57

Order with drawing opinion, etc. 57

Order directing filing of opinion and judgment 58

Opinion, Stephens, J. 59

Judgment 64

Order denying petition for rehearing 65

Clerk's certificate 66

Order allowing certiorari 67

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2 *Theodore Romaine Thompson vs.*

In the District Court of the United States,
in and for the District of Idaho,
Eastern Division

No. 2677

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THEODORE ROMAIN THOMPSON,
Defendant.

INDICTMENT

(50 USCA 311)

United States of America,
District of Idaho—ss.

The Grand Jurors of the United States of America, being first duly empaneled and sworn, in and for the District of Idaho, sitting at Pocatello, Idaho, in the name and by the authority of the United States of America, upon their oath do find and present:

That heretofore, to-wit,—on or about the 18th day of April, 1944, in the County of Bannock, State and District of Idaho, Eastern Division, and within the jurisdiction of this Court, the defendant, Theodore Romaine Thompson, being then and there an assignee of Civilian Public Service Camp No. 67, Downey, Idaho, did, then and there, knowingly, wilfully, unlawfully and feloniously, without proper

authority so to do, leave, desert, and depart from said Civilian Public Service Camp No. 67;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

S. REED ANDRUS

Foreman of the United States
Grand Jury.

R. W. BECKWITH

Asst. United States Attorney for the District of
Idaho.

Presented by the Foreman in open court and
filed in the presence of the Grand Jury Oct. 17,
1944. W. D. McReynolds, Clerk. [3]

[Title of District Court and Cause.]

MINUTES OF THE COURT

October 23, 1944

Comes now the District Attorney and the defendant, Theodore Romaine Thompson, and his counsel, into Court, this being the time fixed by the Court for the defendant to plead to the Indictment. The Court asked the defendant if he plead guilty or not guilty of the offense charged in the Indictment, and the defendant plead not guilty.

The Court fixed 10 o'clock A. M., on Tuesday, October 24, 1944, to follow Case No. 2676, as time for trial. [4]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above entitled case, find the defendant Guilty as charged in the Indictment.

NEWELL CALL

Foreman.

[Endorsed]: Filed Oct. 26, 1944. [5]

In the District Court of the United States,
in and for the District of Idaho,
Eastern Division

No. 2677

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THEODORE ROMAINE THOMPSON,

Defendant.

JUDGMENT AND SENTENCE

On this 25th day of October, 1944, came the United States Attorney, and the defendant Theodore Romaine Thompson, appearing in proper person, and with counsel, and

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment

in the above-entitled cause, to wit: Violation Selective Training and Service Act of 1940 (50 USCA 311) Desertion from CO Camp and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of three years and three months, and pay a fine of \$300.00, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as a commitment herein.

CHASE A. CLARK

United States District Judge.

The Court recommends commitment to a penitentiary.

[Endorsed]: Filed Oct. 25, 1944. [6]

[Title of District Court and Cause.]

TRANSCRIPT

This matter came on for trial on October 24, 1944, at Pocatello, Idaho, before the Honorable Chase A. Clark, sitting with a jury.

Appearances:

John A. Carver, United States District Attorney

E. H. Casterlin, Assistant United States District Attorney

R. W. Beckwith, Assistant United States District Attorney

All of Boise, Idaho,

Attorneys for Plaintiff.

Dellmore Lessard, Portland, Oregon,

Attorney for the Defendant.

G. C. Vaughan, Reporter. [7]

10 o'clock A. M., October 24, 1944

(Jury qualified and selected)

The Court: You may make your opening statement Mr. Beckwith.

Mr. Beckwith: In this case the Government expects to prove that the defendant Theodore Romaine Thompson was duly registered under the Selective Training and Service Act with Local Board Number 1 at Medford, Oregon; that he was duly classified 4E by the Board and that he was ordered to report for work of National Importance by direction of the National Headquarters of Selective Service; that he was ordered to report to Camp 67 at Downey, Idaho; that he did report to

this camp; that he reported in at Downey Idaho and that about the 18th of April subsequent to reporting in at the camp, he left the camp without authorization and deserted from that camp.

Mr. Lessard: I would like to make my statement at this time.

The Court: Very well, you may make your statement.

Mr. Lessard: Ladies and Gentlemen of the Jury, the defendant will endeavor to prove that he is one of the sect known as Jehovah's Witnesses; that he was registered as stated by the attorney for the Government; that he received a 4E classification, which is the [9] classification given to those who are conscientious objectors and we will attempt to prove that at all times he requested a classification of 4D which is the classification given to ministers; that he is a minister in the Jehovah's Witnesses belief and as such claims to be exempt from training and service under this act. We will prove that he did report at the Downey, Idaho Civilian camp for the purpose of following the law as he saw it under the act; that he exhausted all the administrative process and reported to the camp so that he could have this Court determine whether the Board had committed error and discriminated in giving his that classification.

Mr. Beckwith: I move that the statement of counsel regarding the classification of this defendant and his action in reporting for the purpose of having this Court determine the legality of the action of the Board, be stricken as being incompe-

tent irrelevant and immaterial and not within the issues of this case.

Mr. Lessard: I have been expecting that objection and am prepared to argue it.

(Whereupon the jury was admonished by the Court and excused pending the call of the Bailiff.)

(Argument of counsel.) [10]

The court: At this time I will permit the statement to stand in the record and the Court will take care of the matter as the case progresses. In other words I will reserve ruling on the question as to striking counsel's statement until later in the case.

Mr. Clerk, will you read the indictment.

(Whereupon the indictment was read by the Clerk.)

HELEN RAZUM

being called as a witness on the part of the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Beckwith:

Q. State your name, residence and occupation?

A. Helen Razum, Medford, Oregon, and I am clerk of Selective Service Board Number 1.

Q. At Medford? A. Yes, sir.

Q. That is Jackson County? A. Yes, sir.

Q. How long have you been clerk of this Board?

A. Since March 9, 1942.

(Testimony of Helen Razum.)

Q. As Clerk of Local Service Board number 1 of Jackson County Oregon, is it your official duty to keep all selective service records affecting the men registered with that Board? [11]

A. Yes, sir.

Q. Did you keep such records?

A. Yes, sir.

Q. Have you the selective service record of the defendant Theodore Romaine Thompson?

A. Yes, sir.

Q. Is he registered with that Board.

A. Yes, sir.

Q. That is, with Local Board Number 1 of Jackson County, Oregon.

A. Yes, sir.

Q. Handing you registration card of this defendant, marked Plaintiff's exhibit 1 for identification, I will ask you to state what that is?

A. That is the registrar's report showing that this man registered on October 16, 1940 at Medford, Oregon.

Mr. Beckwith: I ask to have this admitted in evidence.

Mr. Lessard: I will state that I have no objections to the exhibit, and it might save time to have the whole file introduced in evidence.

The Court: This exhibit may be admitted.

Q. Now take form number 40 from the file and I will ask to have that marked as plaintiff's exhibit 2.

A. Yes, sir.

Q. Handing you what has been marked for iden-

(Testimony of Helen Razum.)

tification as plaintiff's exhibit 2 I will ask you what that is. [12]

A. Selective service questionnaire completed by Mr. Thompson and endorsed on May 27, 1941.

Q. Does that have a record of the classification?

A. A complete record of classification.

Q. What classification has he?

A. 4E now.

Q. Do you have form 47 with you?

A. Yes, sir.

Q. Handing you what has been marked for identification as plaintiff's exhibit 3 I will ask you to state what that is?

A. That is the special form for conscientious objector, that is also endorsed May 27, 1941.

Mr. Beckwith: I ask to have this exhibit admitted in evidence. I also ask that exhibit 2 be admitted.

The Court: If there is no objection, they may both be admitted.

Q. Do you have an order in that file issued by the National headquarters directing what camp Mr. Thompson should be sent to?

A. Yes, sir, that is form D. S. S. 49.

Q. Now, handing you exhibit marked Plaintiff's exhibit 4 for identification, I will ask you to state what it is?

A. That is the assignment to work of national importance.

Q. Concerning Mr. Thompson, the defendant here? [13]

(Testimony of Helen Razum.)

A. Yes, sir, requesting that he be delivered to camp number 67 on April 18, 1944.

Q. And did your Board order that Mr. Thompson report to Civilian Public service camp number 67, at Downey, Idaho?

A. Yes sir, we did.

Q. Have you a copy of the order you sent to him?

A. Yes sir.

Q. Handing you what has been marked for identification as Plaintiff's exhibit 5, I will ask you to state what it is?

A. That is form D S S 50 to report for work of National importance. That is dated March 21, 1944, ordering him to report before our Board on April 16, for transportation.

Mr. Beckwith: We now offer exhibits 4 and 5 in evidence.

The Court: They may be admitted.

Q. Did Mr. Thompson report as required in exhibit 5?

A. Yes sir.

Q. And was he sent to Civilian Camp number 67?

A. Yes, sir.

Q. Do you have the receipt of the camp director to the Order?

A. Yes sir, it is on form number 50.

Mr. Beckwith: That is all, you may examine.

Cross Examination

By Mr. Lessard: [14]

Q. Referring to Government's exhibit 1, the questionnaire—

A. That is exhibit 2.

(Testimony of Helen Razum.)

Q. In this questionnaire on page 5 under series 8 we read concerning the defendant Thompson: "I am a minister of religion. I do customarily serve as a minister. I have been a minister of Jehovah's Witnesses since August 1, 1940. I have been formally ordained. If so, my ordination was performed on August 1, 1940 by Jehovah God and The Watchtower Bible & Tract society, at Medford, Oregon." Did your Board consider that claim of the defendant?

Mr. Beckwith: That is objected to as Incompetent, irrelevant and immaterial.

The Court: Yes, this witness is only an administrative officer and as I take it just the custodian of the records. She has no judicial position and I don't think that she would be entitled to pass on what was the judgment of the Board or what they considered. The only thing she can testify to is what the record shows.

Mr. Lessard: May I ask if she knows?

Mr. Beckwith: That is incompetent, irrelevant and immaterial also.

The Court: You may ask the question.

Q. Do you know if they considered it?

A. I wasn't employed by the Board at that time.

[15]

Q. Referring to the back of this exhibit 2 we find a notation "10/1/43, 4D H H G" and the other looks like "two years" and it has been inked through—

A. —that was entirely by the board.

(Testimony of Helen Razum.)

Mr. Beckwith: I object to that also as incompetent, irrelevant and immaterial.

The Court: If it is not some act of hers I will sustain the objection.

Q. Referring to the file you have various letters written by Mr. Thompson? A. Yes sir.

Q. Letters in which he stated his position in claiming to be a minister. A. Yes sir.

Q. Now will you refer to letter dated November 5, 1943? A. Yes, I have it.

Q. You also have another letter dated November 5, 1943, "To whom it may concern"?

A. Yes sir.

Mr. Lessard: May we have them marked?

Q. You have another communication from a man named Kimmert dated the 24th of October 1943?

A. We have two dated October 24, 1943.

Mr. Lessard: May we have both of them marked as exhibits? [16]

Q. Now, you have another letter dated July 21, 1941. A. Yes sir.

Mr. Lessard: I would like that to be marked as an exhibit also.

Q. I am showing you exhibits 6, 7, 8, 9 and 10. Will you tell us what those are?

A. Exhibit 6 is a notice of appeal, appealing his classification for a classification of 4D.

Q. Does it state any reason why he is appealing?

A. Yes it—

Mr. Beckwith: —Don't give the reason.

(Testimony of Helen Razum.)

Q. Just tell what the other exhibits are.

A. Exhibit 7 is a certificate signed by twelve different Jehovah's witnesses and I assume that it states the subjects that are studied by ministers and it says that they consider him a minister,—an ordained minister.

Mr. Beckwith: I object to that as she is reading from the instrument. I ask that the answer be stricken.

The Court: It may be stricken.

A. Exhibit 8 is an affidavit signed by Ted Kimmet, Company Servant of Jehovah's witnesses, and exhibit 9 is also an affidavit signed by Ted Kimmet, it is dated October 24, 1943. Exhibit 10 is a notice of appeal dated July 21, 1941.

Q. You also have a photostatic copy of a certificate of [17] ordination from the Watch Tower Bible and Tract Society.

A. I have three photostatic copies of letters here.

Mr. Lessard: I would like to have them marked as exhibits. Now, Your Honor, I offer exhibits 6, 7, 8, 9, 10, 11, 12 and 13 all of which purport to show that the defendant claims to be a minister of the gospel and so informed the draft board and that he claimed a classification 4D.

Mr. Beckwith: We object on the ground that they are not within the issues before the jury. This jury is not sitting as an appeal board.

The Court: I will admit them only as a part of the record and files in this case. I will instruct the jury as to the law.

(Testimony of Helen Razum.)

Mr. Lessard: May I read exhibit 13 or does the witness read the exhibits in this Court.

The Court: It is the custom to stipulate that any part of any exhibit admitted may be read by counsel at any time during the trial.

Mr. Beckwith: I will so stipulate here.

Mr. Lessard: Yes, I will stipulate.

Mr. Lessard: Defendant's exhibit 13 reads as follows: "To Whom It May Concern: This is to certify that Theodore Romaine Thompson of Medford, Oregon, one of Jehovah's Witnesses, has been associated with [18] the Watchtower Bible and Tract Society, according to our records, since 1941, and has been serving as Assistant Company Servant of the Medford, Oregon, Company of Jehovah's Witnesses since October 29, 1942, and Theocratic Ministry instructor since June 1, 1943.

As assistant Company servant, Mr. Thompson assists the Company servant in supervising the activities of the church in their particular territory. He also keeps all the records of the activities of the church and personally conducts Bible studies wherever required throughout the assignment as well as other ministerial duties.

As Theocratic Ministry Instructor, Mr. Thompson has charge of the local school for the instruction of Theocratic ministry in the advanced study of the Bible and Bible subjects.

Mr. Thompson has declared himself to be a follower of Christ Jesus and wholly consecrated to do the will of Almighty God. He has taken a course

(Testimony of Helen Razum.)

of study in the Bible and Bible helps prescribed by this Society and has shown himself apt to preach and teach this Gospel of the Kingdom.

He has the Scriptural ordination to preach this Gospel of the Kingdom. Isaiah 61; 1-2. Isaiah 52; 7. He is, therefore, declared by this Society a duly Ordained Minister of the Gospel and is authorized to represent this [19] Society and preach this Gospel of the Kingdom, proclaiming the name of Jehovah God and Christ Jesus, His King. Signed, Watchtower Bible and Tract Society by J. S. Sullivan, Superintendent of Evangelists.

Subscribed and sworn to before me this 2nd day of November 1943, Willard E. Jackson, Notary Public."

Mr. Beckwith: May the record show that we have an exception to the ruling of the Court on these matters?

The Court: Yes, and you will understand that am admitting these as a part of the records and files of the Selective Service Board and the Jury will be instructed on that matter.

Mr. Lessard: The affidavit of Theodore Kimmet being exhibit 9 reads as follows: "I, Theodore Kimmet, Company servant for Jehovah's Witnesses at Medford, Oregon, do hereby certify that Theodore Romaine Thompson, of 211 W. Jackson, Medford Oregon, is one of Jehovah's Witnesses, that he is an ordained minister of the gospel, and that he regularly engages in preaching the gospel of God's kingdom from house to house, and by calling back

(Testimony of Helen Razum.)

on the people of Good-will to play recorded bible lectures for them, or to conduct Bible studies in the homes of these people of good-will, or to orally instruct them concerning the establishment of the Kingdom of God. Such [20] method of preaching the gospel of the Kingdom is in harmony with the Bible as recorded at Acts 20:20; Mathew 24; 14; Isaiah 61; 1, 2. 1 Peter 2; 21, Isaiah 43; 9-12 and other scriptures.

I further certify that the above named Theodore Thompson is at the present time serving as Assistant Company servant of the Medford Company of Jehovah's Witnesses, and that he is also School Instructor in a course in Theocratic Ministry which is being regularly conducted in the Kingdom Hall, 922 N. Central, Medford. Ted Kimmet, Company servant. Subscribed and sworn to before me this 24th day of October 1943, Elsie L. Knox, Notary Public."

Q. Now, Miss Razum, do you have in your file any document which tends to show that the defendant Thompson is not a minister of the gospel?

Mr. Beckwith: Objected to as calling for a conclusion of the witness.

The Court: Yes, that would have to be a conclusion.

Q. Do you have any document denying that Mr. Thompson is a minister of the gospel?

Mr. Beckwith: Objected to for the same reason.

The Court: Sustained. She is called upon to

(Testimony of Helen Razum.)

make this decision. Whether there is such a document.

Mr. Lessard: No further cross examination. [21]

Mr. Beckwith: That is all.

ORIN BEECHY

being called as a witness on the part of the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Beckwith:

Q. State your name. — A. Orin Beechy.

Q. Your occupation? —

A. Director of Civilian Service Camp number 67.

Q. As director of that camp is it your official duty to keep a record of the men assigned to that camp under the Selective Service and Training Act? A. Yes sir.

Q. Do you keep such a record?

A. Yes sir.

Q. Do you have a record of Theodore Romaine Thompson being assigned to your camp?

A. Yes sir, there was a record in the files.

Q. I wish you would look in the file and report you have there,—refer to form 48 which is the conscientious objector's form.

A. No sir, I don't have form 48.

Q. What form do you have there?

(Testimony of Orin Beechy.)

A. D S S 50.

Q. Have you such a report there? [22]

A. I do.

Q. Handing you what I have had marked as exhibit 14 for identification, I will ask you to state what it is?

A. It is D. S. S. Form 50 an order charging Mr. Thompson to report to Civilian public service camp; with the bottom part of the form filled in that he has reported to the camp.

Mr. Beckwith: We offer that in evidence.

The Court: Admitted if there is no objection.

Q. Were you present at the camp at the time this defendant was there at the camp?

A. No sir, I wasn't.

Q. Who was the director at that time?

A. Mr. Nebel.

Q. He is not the director now?

A. No sir, he is not.

Q. Have you a letter written to Mr. Nebel, by Mr. Thompson dated April 18, 1944?

A. Yes sir.

Q. I will show you what is marked plaintiff's exhibit 15 and ask you what it is?

A. It is a letter written to Mr. Nebel dated April 18, 1944 and signed by T. R. Thompson.

Q. Is that a part of the official records as director? [23].

A. It is a part of the records, yes sir.

Q. Has this defendant been at your camp since you have been director?

(Testimony of Orin Beechy.)

A. Not to my knowledge.

Q. When did you take over the management of the camp? A. June 7, 1944.

Q. You have in your file a report by Dale A. Nebel as camp director dated April 29, 1944 concerning the defendant Mr. Thompson?

A. Yes sir.

Q. Will you let me see that please.

A. Yes sir.

Q. Now, I will ask you to state what exhibit 16 is.

A. It is a report that the director is required to make when anyone leaves the camp without authority.

Q. It is a part of the records of Mr. Thompson? A. That's right.

Mr. Beckwith: I ask to have this admitted as plaintiff's exhibit 16.

Mr. Lessard: No objection.

The Court: Admitted.

Q. I think maybe I asked this question: Has Mr. Thompson been in camp number 67 since you have been there as director?

A. Not to my knowledge.

Mr. Beckwith: That is all. [24]

Cross Examination

By Mr. Lessard:

Q. You were not present at any time Mr. Thompson was at the camp?

A. Not to my knowledge.

(Testimony of Orin Beechy.)

Mr. Lessard: I am not sure about the stipulation as to the reading of exhibits.

The Court: You may read them at any time.

Mr. Lessard: Then I will read exhibit 15 to the jury at this time. It is: "Mr. Dale A. Nebel, Camp Director Civilian Public Service Camp No. 67, Downey Idaho. I Theodore Romaine Thompson, 211 W. Jackson, Medford, Oregon, on this the 18 day of April 1944, am reporting to Civilian Public Service Camp no. 67 at Downey Idaho, as ordered, to do by Local Board No. 1, Jackson County, City Hall, Medford, Oregon, in an order under date of March 21, 1944. However, I cannot remain at the above named camp for the reason that I am a duly ordained Minister of the Gospel and one of Jehovah's Witnesses. As a Minister and a Witness for Jehovah God, I have entered into a covenant to do his will as set forth in his word the Bible. I expressly believe that it is the Will of Jehovah God at this time of the end of the present world, that his servants' preach this gospel of the Kingdom for a witness unto all nations, declare His name, the day of God's vengeance, and comfort those who are now [25] mourning at the distressing conditions in the earth, as set forth at Matthew 24; 14. Isaiah 61; 1, 2. Isaiah 43; 10-12 and other scriptures. To voluntarily lay aside my commission would make me a covenant breaker, worthy of everlasting destruction. Romans 1; 31-32. In refusing to remain at this camp, I am choosing to obey God rather than men. Acts 5; 29.

(Testimony of Orin Beechy.)

I further believe that the Selective Service Authorities have acted unfairly and arbitrarily in refusing to grant me classification 4D that of a duly ordained minister. Yours very truly T. R. Thompson.

To Whom This May Concern: This is to certify that Theodore Romaine Thompson reported to C P S Camp No. 67 Downey, Idaho, on April 18, 1944. Dale A. Nebel, Camp Director. Dated April 18, 1944."

I also wish to read a portion of exhibit 16. After the heading and some printed matter the statement that the assignee did not return to camp but is this day being dropped from our records. Under the heading Statement of assignee: "The assignee is not available at this time for a statement but you will find attached a copy of a letter which was written by him and is dated April 18th, the day he left camp." Under Remarks is the following: "Theodore Romaine Thompson reported to camp late in the forenoon of April 18th. That is the date he was assigned to report to camp. He immediately [26] presented me with a letter, copy attached, stating that he could not remain in camp and stating his reasons for that. He further stated that he intended to leave immediately. We discussed the matter quite thoroughly and I tried to explain the seriousness of such action. He claimed to be aware of the fact that the consequences would not be pleasant. That same afternoon I wrote him a letter asking him to reconsider his decision and

(Testimony of Orin Beechy.)

to think about coming back to camp. Another such letter was written on April 27th. Copies of these letters are attached." This exhibit is dated April 29th. Under the heading Recommendations: "Since the assignee claims to be erroneously classified, I recommend that his case be reviewed before judgment is passed." This is signed by Dale A. Nebel, Camp Director.

Mr. Lessard: No further questions.

Mr. Beckwith: That is our case in chief.

Mr. Lessard: I desire to argue a motion for a directed verdict based upon the same grounds stated before.

The Court: Very well, I will excuse the jury subject to the call of the Bailiff.

Mr. Lessard: May it please the Court, at this time the defendant moves for a directed verdict of not guilty for the reason that it has not been shown by the Government that the defendant has been correctly [27] classified in this, that the defendant,—strike that last,—it is not shown that the Government has considered any evidence showing anything to the contrary to the defendant's contention that he is a minister of the gospel or the certificate of ordination or the statement of the Company Servant that he is a regular minister of the gospel. According to the showing made the draft board has not considered any of these matters, and also that the defendant has shown by letters introduced repeatedly requesting a classification of 4D and that he is a minister of the gospel.

(Argument of counsel.)

The Court: This matter has been well settled by the higher courts. The motion will be denied.

Mr. Lessard: May we have an exception.

The Court: You may have your exception.

THEODORE ROMAIN THOMPSON

being called as a witness on the part of the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Lessard:

Q. Your full name is Theodore Romain Thompson?
A. Yes sir.

Q. Where do you reside? [28]

A. Medford, Oregon.

Q. How long have you resided there?

A. Five years.

Q. Who do you reside with?

A. My wife Margaret and son John.

Q. How old is your son?

A. Four years old.

Q. How old are you? A. Thirty-four.

Q. Where were you born?

A. Spokane, Washington.

Q. How long did you reside there?

A. We moved to Idaho in 1914, to Deary, Idaho, and there we lived until 1922 and then moved to Troy, Idaho and lived there until 1939.

Q. And then where? A. Medford.

Q. And have resided there since?

(Testimony of Theodore Romaine Thompson.)

A. Yes sir.

Q. What is your occupation?

A. Minister of the gospel is my primary occupation.

Q. For how long have you been a minister of the gospel? A. Since 1940.

Q. In what sect?

A. I am one of Jehovah's Witnesses. [29]

Q. How did you become a minister?

A. I began studying the publications of the Watchtower Bible and Tract Society together with the bible, and by a diligent study of these books and publications and the sacred scriptures I came to the knowledge of the sacred purpose and then consecrated my life as a minister.

Q. What date in 1940 did you become a minister? A. August 1940.

Q. What are your duties?

Mr. Beekwith: I object to this as incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. Now, Mr. Thompson, what classification,—strike that,—did you notify the draft board of your status as a minister? A. Yes sir.

Q. Did you claim any particular status or classification with the Board?

Mr. Beekwith: Objected as that is a matter of record on form 40.

The Court: He may answer.

A. I claimed the classification of an ordained minister, classification 4D.

(Testimony of Theodore Romaine Thompson.)

Q. The draft board record shows you claimed at one time the classification as a conscientious objector?

A. I did not claim that classification, I filled out the form. [30]

Q. Have you ever claimed that classification?

A. No sir.

Q. Did you ever request that classification?

A. No sir.

Q. Have you ever requested any other classification other than the classification of 4D?

A. No sir, that has been my claim since I filled out the questionnaire.

Q. You are accused with desertion from civilian Public service camp 67.

A. Yes sir.

Q. Tell the jury the facts about that?

A. I was ordered to report to the Civilian Public Service camp after I had exhausted all means I had available to obtain my proper classification. I believe the order to report to the camp was mailed on the 21st of March, ordering me to report on April 16 at Medford, Oregon. Shortly before this time to report I received some information concerning the Falbo decision and also the Billings decision in which decisions the Court had held that the only way I could exhaust my administrative remedies was to carry out the orders of the Local Board, and so on Sunday April 16, I reported to the Board as I was ordered and took the train as I was ordered to Downey, Idaho. I arrived in Downey, Idaho about 11 in the morning of April

(Testimony of Theodore Romaine Thompson.)

18, and then presented the camp director Mr. Nebel with a letter setting forth the reasons that I was [31] reporting to the camp but that I could not remain for the reasons brought out. I remained at the camp for fifteen or twenty minutes. The reason I went to the camp was to exhaust my administrative remedies and not to take the law into my own hands.

Mr. Lessard: You may cross examine.

Cross Examination

By Mr. Beckwith:

Q. These two supreme Court decisions do not hold that you could report to the camp and then desert the camp?

A. I don't know that they did.

Q. You did leave civilian service camp 67 on the 18th day of April 1944? A. Yes sir.

Q. Without any authorization?

A. Other than that I was exhausting my administrative remedies.

Q. You never have been back there?

A. No sir.

Mr. Beckwith: That's all.

Mr. Lessard: That's all, I will call Doris Cox.

DORIS COX

being called as a witness on the part of the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Lessard:

Q. State your full name? [32]

A. Doris Elizabeth Cox.

Q. Where do you reside?

A. Before I came over here, at Ashland, Oregon.

Q. What is your religious belief?

A. I am one of Jehovah's witnesses.

Q. Are you acquainted with Theodore Romaine Thompson, the defendant?

A. Yes, I have known him since 1942.

Q. Do you know his business or occupation?

A. Since I have known him he has been an ordained minister.

Mr. Lessard: That is all.

Mr. Beckwith: No cross examination.

Mr. Lessard: Defendant rests.

Mr. Beckwith: No rebuttal.

The Court: I think we will recess at this time until 1:30 P. M.

October 24, 1944, 1:30 P. M.

The Court: You may proceed with your argument.

Mr. Lessard: I desire to renew my motion for a directed verdict of not guilty on the same grounds I urged this morning.

The Court: Do you want to present it further?

Mr. Lessard: I would cite the same authorities that I presented this morning. [33]

The Court: The motion will be denied.

Mr. Lessard: May we have an exception?

The Court: Yes.

(Argument to the jury.)

The Court: Ladies and Gentlemen of the Jury: Before you were called upon to serve as trial jurors in this case, a grand jury had returned an indictment against the defendant charging him with the offense of wilfully, knowingly, unlawfully and feloniously evading the requirements of the selective training and service Act of 1940, that is, that he did, without proper authority so to do, leave, desert and depart from Civilian Public Service Camp Number 67.

The indictment has been read to you and from the reading of the indictment and the evidence introduced in the trial you are familiar with the charge. The indictment is in itself no proof of guilt. It is a mere formal accusation made by the Government against the defendant, charging him with the commission of an offense. The Government thus advises him, in advance of the trial, of the issues he must meet, in order that he might prepare his defense, and hence he is not to be prejudiced, nor are you to be influenced by the mere fact that he has been indicted.

The defendant has pleaded "not guilty" which means [34] that he denies the allegations of the indictment.

When you go to your jury room, and indeed during your entire deliberations, you will bear in mind and be governed by the general rule that the defendant in this case is presumed to be innocent

of the offense charged until his guilt is proved by competent evidence beyond a reasonable doubt. The burden is therefore upon the Government to prove the material allegations of the indictment beyond a reasonable doubt.

You will note that the phrase is "reasonable doubt". It is just such a doubt as the term implies, and is one for which you can give a reason. It means a doubt which is reasonable in view of all of the evidence, growing out of the testimony in the case, or the lack of testimony. So generally, I may say, that after you have fairly and impartially considered all the evidence, with a sincere and reasonable effort to reach a conclusion, you can candidly say that you are not satisfied of the defendant's guilt,—if you still entertain such a doubt as would cause you to hesitate in the most important affairs of life, then you have a reasonable doubt and your verdict should be for the defendant. But on the other hand, if, after an impartial and earnest consideration and comparison of all the evidence your minds are in such a condition that you truthfully can say that you have an abiding conviction [35] that the charge is true, then you have no reasonable doubt and it becomes your duty to so declare by your verdict.

It frequently becomes necessary for counsel to advise the jury what, in their judgment, the law is. This is in order that they may properly analyze the evidence in support of their contention, but it

is understood that such statements of the law given by counsel are not binding upon the jury, and you are advised that you must look to the Court for the law, and you will accept the instructions of the Court as the law in the case.

You are instructed that the United States Constitution grants no immunity from military service because of religious convictions or activity, but immunity arises solely through Congressional grace in pursuance of a traditional American policy of deference to conscientious objectors and holy calling, and that the term "minister or religion" must be interpreted according to the intent of Congress and not according to the meaning attached to it by members of any particular group.

It is the function of the Selective Service Boards, duly appointed and organized according to law, to classify registrants and to fix the time for their appearance and to assign them according to their classification.

The Government must prove the material allegations of the indictment; that the defendant was duly registered by a local Board under the Selective Service and training [36] Act of 1940 and that he was thereafter classified and that he was ordered to report and that he did thereafter leave and desert the Civilian Public Service Camp to which he was assigned as set out in the indictment, which has been read to you and which you may take to the jury room.

If you find that the Government has proved these

allegations then you will find the defendant guilty as charged, otherwise you will acquit him.

You are not to concern yourselves with the action of any Selective Service Board, nor are you concerned in whether or not they acted properly in making their orders. This evidence was submitted to show the opportunity afforded the defendant to present proof of any classification he might claim. It is not your province to review the action of the draft board in its determination and classification of the defendant.

In this matter you should concern yourselves only with the question of the guilt or innocence of the defendant as to the offense charged in the indictment, that is,—that he did without proper authority so to do, leave, desert and depart from Civilian Public Service Camp No. 67.

It is necessary in this Court that you all agree in arriving at a verdict. When you retire to your jury room you will elect one of your number as foreman, and when you have arrived at a verdict your foreman alone need [37] sign it, and it will then be returned into Open Court.

A verdict has been prepared for your use and you will insert in the blank space the word 'guilty' or the words 'not guilty' to conform with your finding.

Before the jury retires is there any exception you want in the record.

Mr. Lessard: I wish to make a couple of objections. The defendant objects to the Court's refusal

to give the defendant's requested Instruction to the jury. Also the defendant excepts to the withdrawing from the consideration of the jury any action of the Jackson County, Oregon, Selective Service Board number 1.

The Court: Overruled. The jury may now retire to consider their verdict.

[Endorsed]: Filed Nov. 25, 1944. [38]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant. Theodore Romaine Thompson, 211 W. Jackson St., Medford, Oregon.

Name and Address of Appellant's Attorney. Dellmore Lessard, 505 Corbett Bldg., Portland, Oregon.

Offense. Desertion from Civilian Public Service Camp.

Date of Judgment. October 25, 1944.

Brief Description of Judgment or Sentence. Three years and three months in a Federal Penitentiary to be selected by the Attorney General and \$300. fine.

Name of Prison where now Confined if not on Bail. Defendant on \$5000.00 bail.

I, Theodore Romaine Thompson, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from

the judgment above-mentioned on the grounds set forth below.

1. Denial of motion for a directed verdict of "Not Guilty" at the conclusion of the presentation of Government's case;

2. Denial of motion for directed verdict of "Not Guilty" at the conclusion of the trial;

3. Refusal of Trial Court to give requested instruction to the jury;

4. The giving of the Trial Court's instruction to the jury that they cannot consider irregularities on the part of Jackson County Board No. 1, of the State of Oregon, and withdrawing from the consideration of the jury all consideration of the discrimination of the said draft board against this defendant in refusing to classify him as IV-d, and giving him classification IV-e against his will and without his request;

5. Denial of the Trial Court of defendant's motion for a judgment of "Not Guilty" notwithstanding the verdict of [39] the jury, or in the alternative for a new trial.

T. R. THOMPSON

Appellant

Dated: October 25, 1944.

Received a copy of the above Notice of Appeal this 25th day of October, 1944.

R. W. BECKWITH

Asst. U.S. Atty.

[Endorsed]: Filed Oct. 25, 1944. [40]

[Title of District Court and Cause.]

SUPERSEDEAS — ORDER

This cause come on to be heard this 26th day of October, 1944, upon the application of the defendant, Theodore Romaine Thompson, for an appeal to the Circuit Court of Appeals of the United States, and said appeal having been allowed;

It Is Ordered that the same shall operate as a supersedeas, the said appellant having executed a bond in the sum of Ten Thousand Dollars (\$10,000.00) as provided by law, and the Clerk is hereby directed to stay the mandate of the District Court of the United States for the Eastern Division of the District of Idaho until the further order of the court.

Dated this 26th day of October, 1944.

CHASE A. CLARK

District Judge.

[Endorsed]: Filed Oct. 26, 1944. [41]

[Title of District Court and Cause.]

**BAIL BOND ON APPEAL TO UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

State of Idaho

County of Bannock—ss.

Know All Men By These Presents:

That we, Theodore Romaine Thompson, as Principal; and Charles F. Condart, of Idaho Falls, Bon-

neville County, Idaho, and P. W. Anderson, of Pocatello, Bannock County, Idaho, and Hilda Mark of Pocatello, Bannock County, Idaho, and Floyd Anderson of Pocatello, Bannock County, Idaho, as Sureties, are held and firmly bound unto the United States of America in the full and just sum of Ten Thousand Dollars (\$10,000.00) to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents:

Sealed with our seals and dated this 26th day of October in the year of our Lord One Thousand Nine Hundred and Forty Four.

Whereas, lately at the fall term, A.D. 1944, of the District Court of the United States for the District of Idaho, Eastern Division and on the 25th day of October 1944 thereof, in a suit pending in said court between the United States of America, plaintiff, and Theodore Romaine Thompson, defendant, a judgment and sentence was rendered against the said Theodore Romaine Thompson, and the said Theodore Romaine Thompson has filed a Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit, and a copy of said Notice of Appeal directed to the United States of America has been duly served, said Notice of Appeal being dated [42] on the 25th day of October, 1944, and service of said Notice of Appeal having been made on the 25th day of October, 1944.

Now, the condition of the above obligation is such, that if the said Theodore Romaine Thompson shall appear in the United States Circuit Court of Appeals for the Ninth Circuit on the 1st day of the next term thereof to be held at the city of San Francisco, California or such city as said court may hear the appeal, and from day to day thereafter during said term and from term to term and from time to time, until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause and shall surrendered himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of said District Court against him shall be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, else to remain in full force, virtue and effect.

**THEODORE ROMAINE
THOMPSON**

Principal

CHARLES F. CONDART

P. W. ANDERSON

HILDA MARK

FLOYD ANDERSON

Sureties [43]

United States of America

State of Idaho, County of Blaine—ss.

I, Charles F. Condart, a citizen of the State of Idaho, and Obligor in the above undertaking, do

solemnly swear that I am a resident of the State of Idaho, in the County of Bonneville; that my post office is in the town of Idaho Falls, Idaho therein; That I own real estate over and above all my debts, liabilities, and exemptions under homestead and appraisement laws to the amount of Ten Thousand Dollars (\$10,000.00) subject to execution in the State of Idaho.

CHARLES F. CONDART

Subscribed And Sworn To Before me, this 26th day of October, 1944.

[Seal] W. D. McREYNOLDS

Clerk of U. S. District Court, District of Idaho,
Eastern Division.

I certify that the above Surety is in my opinion sufficient in said case.

[Seal] W. D. McREYNOLDS.

Clerk of District Court, U.S., Dist. of Idaho, Eastern Div.

State of Idaho
County of Bannock—ss.

We, P. W. Anderson, Hilda Mark and Floyd Anderson, are citizens of the State of Idaho, and Obligors in the above undertaking and do solemnly swear that we are residents of the State of Idaho in the County of Bannock, and that my post office is in the town of Pocatello, Idaho therein; that we own real estate over and above all our debts, liabilities

and exemptions under homestead and appraisement laws to the amount of \$10,000.00 subject to execution in the State of Idaho.

P. W. ANDERSON

HILDA MARK

FLOYD ANDERSON [44]

Subscribed And Sworn To Before me this 26th day of October, 1944.

[Seal] W. D. McREYNOLDS.

Clerk of U.S. District Court, District of Idaho,
Eastern Div.

I certify that the above Surety is in my opinion sufficient in said case.

[Seal] W. D. McREYNOLDS.

Clerk of U.S. District Court, District of Idaho,
Eastern Div.

Approved as to form only, 10/26/44.

R. W. BECKWITH.

Asst. U. S. Atty.

[Endorsed]: Filed Oct. 26, 1944. [45]

[Title of District Court and Cause.]

**ORDER RELEASING DEFENDANT ON BAIL
PENDING APPEAL**

The defendant, Theodore Romaine Thompson, in the above entitled cause, having on the 26th day of October, 1944 filed with the Clerk of the District Court of the United States for the District of Idaho, Eastern Division, his appeal bond in the sum of Ten

Thousand Dollars (\$10,000.00), which said bond has been approved by W. D. McReynolds, Clerk of District Court of U.S., for the District of Idaho, Eastern Division as directed by this court, at the time of fixing the bond and the said bond now being approved by the court;

It Is Therefore, Ordered, that the said Defendant, Theodore Romaine Thompson, shall be released from custody of the U.S. Marshal for the State of Idaho or such other person as shall have the custody of said defendant he, the said defendant, now being under bond for his appearance pending his appeal.

Dated this 26th day of October. 1944,

CHASE A. CLARK

District Judge.

[Endorsed]: Filed Oct. 26, 1944. [46]

[Title of District Court and Cause.]

• ASSIGNMENT OF ERRORS

Comes now the defendant and appellant, Theodore Romaine Thompson, and files the following Assignment of Errors upon which he is relying on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I.

That the Court erred in not permitting the defendant to show, and in not permitting the jury to consider that the order of the Selective Service Board No. 1, of Jackson County, Oregon, upon

which the indictment herein was based is void, because the defendant is a minister of religion exempt from all duty of training and service, for the reason that said order was made (a) in excess of the authority of said board, (b) beyond the jurisdiction of the said board (c) contrary to the law, (d) without support of substantial evidence, (e) contrary to the undisputed evidence, (f) arbitrary and capriciously, (g) contrary to the Constitution of the United States by depriving defendant of rights and liberties without due process of law, and (h) in violation of the Regulations of Selective Service.

II.

That the Court erred in refusing to grant defendant's motion for a judgment of acquittal, and the defendant knowingly deserted the Civil Public the evidence.

III.

That the Court erred in charging the jury that it could not consider the illegal and unconstitutional action of Local Selective Service Board No. 2, of Jackson County, Oregon, and in limiting the issue to be decided by the jury as to whether or not defendant knowingly deserted the Civil Public Service Camp.

IV.

That the trial Court erred in refusing to submit the [47] requested instruction to the jury permitting the jury to consider whether or not the local draft board had acted in an illegal and unconstitutional manner in classifying the defendant and in ordering him to report to said CPS Camp.

V.

That the trial Court erred in denying the defendant's motion for a judgment of "Not Guilty" notwithstanding the verdict of the jury, or in the alternative for a new trial.

VI.

That the Court erred in imposing any sentence against the defendant herein.

DELMORE LESSARD

Attorney for defendant

Due service accepted this 20th day of November, 1944.

JOHN A. CARVER

United States District Attorney for the District of Idaho.

By R. W. BECKWITH

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 20, 1944. [48]

[Title of District Court and Cause.]

ORDER

On motion of counsel for the defendant in the above entitled case, and for good cause shown,

It Is Ordered That time for settling and filing Bill of Exceptions on the appeal of the cause be,

and the same hereby is, extended to the 18th day of December, 1944.

Dated this 20th day of November, 1944.

CHASE A. CLARK

United States District Judge.

[Endorsed]: Filed Nov. 20, 1944. [49]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered That the above entitled case came on regularly for trial on Tuesday, October 24, 1944 in the above entitled Court at Pocatello, Idaho, before the Honorable Chase A. Clark, Judge Presiding. A jury having been duly empaneled and sworn to try the issues as by law provided. The United States of America appeared by Messrs. John A. Carver, United States District Attorney, and E. H. Casterlin and R. W. Beckwith, assistants, all of Boise, Idaho. The defendant appeared in person and by his attorney, Dellmore Lessard, of Portland, Oregon.

The appealing defendant respectfully submits the following Bill of Exceptions:

EXCEPTION No. 1

The plaintiff having concluded and rested after submitting all evidence on behalf of the Government, the defendant moved for a directed verdict of "Not Guilty" upon the ground that inasmuch as the defendant had obeyed all administrative proc-

esses and orders of the Local Selective Service Board No. 1 of Jackson County, Oregon, and had reported to the Civilian Public Service Camp as ordered by said board, that it was incumbent upon the Government to prove, and it had failed to prove, that the said local board had considered any evidence whatsoever tending to disprove defendant's claim to be a minister of religion. That as shown by the evidence introduced on behalf of the Government, the said board capriciously and arbitrarily gave the classification of IV-e (Conscientious Objector) to the defendant after he had informed them that he was not a conscientious objector and did not want said classification. That for said reasons the classification of IV-e having been given to the defendant wrongfully and unlawfully, the order to report to the Civilian Public Service Camp was void, [50] and defendant had committed no crime in failing to obey said order.

But the Court denied defendant's motion, and allowed an exception.

EXCEPTION No. 2

The Court thereupon proceeded with said trial, and after both parties had concluded and submitted their evidence the defendant renewed his motion for a directed verdict of "Not Guilty" upon the same grounds as set forth in Exception No. 2,

But the Court denied defendant's motion, and allowed an exception.

EXCEPTION No. 3

That thereafter and before the Court had charged the jury the defendant requested the Court to give an instruction substantially as follows, to-wit:

"The Court instructs you that it is your duty to determine whether or not the defendant is a minister of religion of the sect known as Jehovah's Witnesses, and if you so determine it will be your duty to acquit the defendant because under the law all ministers of religion are exempt from training and service, and the defendant, if a minister of religion would not be required to report at the Civilian Public Service Camp as ordered by the Local Selective Service Board No. 1, of Jackson County, Oregon."

That the Court refused to give said charge, and the defendant excepted to the Court's ruling.

EXCEPTION No. 4

That the Court thereupon charged the jury, and as a part of said charge gave the following:

"The Government must prove the material allegations of the indictment, that the defendant was duly registered by a local board under the Selective Service and Training Act of 1940 and that he was thereafter classified and that he was ordered to report and that he did thereafter leave and desert the Civilian Public Service Camp to which he was assigned as set out in the indictment, which has been read to you and which you may take to the [51] jury room.

"If you find that the Government has proved

these allegations then you will find the defendant guilty as charged otherwise you will acquit him."

"You are not to concern yourselves with the action of any Selective Service Board, nor are you concerned in whether or not they acted properly in making their orders. This evidence was submitted to show the opportunity afforded the defendant to present proof of any classification he might claim. It is not your province to review the action of the draft board in its determination and classification of the defendant.

"In this matter you should concern yourselves only with the question of the guilt or innocence of the defendant as to the offense charged in the indictment, that is, that he did without proper authority so to do, leave, desert and depart from Civilian Public Service Camp No. 67 at Downey, Idaho."

To the giving of which charge the defendant excepted.

EXCEPTION No. 5

The said cause having been submitted to the jury by the Court under its charges, and the jury having deliberated and rendered a verdict against the defendant on October 24, 1944, at the term of Court aforesaid, the defendant made and submitted to the said Court his motion for a judgment notwithstanding the verdict of the jury, and in the alternative for a new trial, on the ground of error committed by the Trial Judge at the time of trial in that the Trial Judge refused to give the charge submitted by the defendant, and in that the Trial Judge refused to permit the jury to consider the

question of whether or not the order of the Selective Service Board upon which the indictment was based, was void because of defendant's being a minister of religion and thereby exempt from all training and service under the Selective Service and Training Act.

On October 24, 1944 the said motion came on to be heard, and upon consideration of said motion the Court on the same day denied the same, to which ruling the defendant excepted.

In connection herewith there is hereto attached a full transcript of the testimony introduced in this cause, and all exhibits introduced [52] at the said trial, certified by the Official Court Reporter, and made a part of this Bill of Exceptions.

DELLMORE LESSARD

Attorney for defendant and
appellant.

United States of America,
District of Idaho—ss.

It Is Hereby Certified That on the 29th day of November, 1944 the Honorable Chase A. Clark, Judge of the above entitled Court, for good cause shown entered an Order allowing defendant Theodore Romaine Thompson, to have to and including December 18, 1944, for settlement and filing of Bill of Exceptions and Assignment of Errors, in respect to the within appeal.

It further appearing that there is attached hereto a full transcript of the testimony offered and all exhibits introduced herein and made a part of this Bill of Exceptions.

It Is Further Certified That the foregoing Exceptions asked and taken by the defendant, Theodore Romaine Thompson, were duly presented within the time fixed by law and the Order of this Court, and the Bill of Exceptions is by me allowed and signed this 14th day of December, 1944.

CHASE A. CLARK

Judge of the District Court of the United States
for the District of Idaho.

United States of America,
District of Idaho—ss.

Due service of the within Bill of Exceptions is hereby accepted in Boise, Idaho, this 11th day of December, 1944, by receiving a copy thereof, duly certified to as such by Dellmore Lessard, attorney for defendant and appellant.

R. W. BECKWITH

Asst. U. S. District Atty.

[Endorsed]: Filed Dec. 14, 1944. [53]

[Title of District Court and Cause.]

**ORDER EXTENDING TIME FOR FILING OF
TRANSCRIPT OF RECORD ON APPEAL**

On motion of counsel for the defendant in the above entitled case, and good cause shown,

It Is Ordered That the time for the filing of the

Transcript of the Record on Appeal in this cause,
be and the same is hereby extended to December
30, 1944.

Dated this 30th day of November, 1944.

CHASE A. CLARK

Judge.

Service of above admitted 11/30/44.

R. W. BECKWITH

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 30, 1944. [54]

[Title of District Court and Cause.]

**ORDER FOR TRANSMISSION OF ORIGINAL
EXHIBITS**

On motion of counsel for the defendant in the
above entitled case, and for good cause shown,

It Is Ordered That all of the exhibits herein in-
troduced by both parties hereto be transmitted by
the Clerk of this Court to the Clerk of the United
States Circuit Court of Appeals for the Ninth Cir-
cuit in their original form.

Dated this 30th day of November, 1944.

CHASE A. CLARK

Judge.

Service of above admitted 11/30/44.

R. W. BECKWITH

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 30, 1944. [55]

[Title of District Court and Cause.]

**STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL.**

Appellant hereby adopts as his points on appeal the assignments of error heretofore placed on file herein.

Dated at Portland, Oregon this 16th day of December, 1944.

DELLMORE LESSARD

Attorney for defendant and
appellant.

Service of above admitted 12/18/44.

R. W. BECKWITH

Ast. U. S. Atty.

[Endorsed]: Filed Dec. 18, 1944. [56]

[Title of District Court and Cause.]

AMENDED PRAECIPE TO CLERK.

You will please prepare a transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal heretofore taken herein, and include in said transcript the following pleadings, proceedings, orders and documents, to-wit:

1. Indictment.
2. Record of plea of not guilty.
3. All exhibits.

4. Verdict of jury.
5. Judgment of Court and sentence.
6. Transcript of testimony.
7. Notice of appeal.
8. Supersedeas—Order.
9. Bail Bond on appeal.
10. Order releasing defendant on bail pending appeal.
11. Assignment of Errors.
12. Bill of Exceptions.
13. All orders extending time.
14. Statement of points upon which appellant intends to rely.
15. This praecipe.

Dated at Portland, Oregon this 16th day of December, 1944.

DELLMORE LESSARD

Attorney for defendant and
appellant.

Received a copy of the above this 18th day of
December, 1944.

R. W. BECKWITH

Asst. U. S. District Atty.

[Endorsed]: Filed Dec. 18, 1944. [57]

[Title of District Court and Cause.]

**CERTIFICATE OF CLERK OF UNITED
STATES DISTRICT COURT TO TRAN-
SCRIPT OF RECORD**

United States of America,
District of Idaho—ss.

I, W. D. McReynolds, Clerk of the District Court of the United States, for the District of Idaho, do hereby certify the foregoing typewritten pages numbered 1 to 57, inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal thereon in the United States Circuit Court of Appeals for the Ninth Circuit, in accord with designation of contents of record on appeal of the appellant, as the same remain on file and of record in the office of the Clerk of said District Court, and that the same constitutes the record on the appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk of this Court for preparing and certifying the foregoing typewritten record amount to the sum of \$6.95, and that the same have been paid in full by the appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, this 20th day of December, 1944.

(Seal)

W. D. McREYNOLDS
Clerk. [58]

[Endorsed]: No. 10928. United States Circuit Court of Appeals for the Ninth Circuit. Theodore Romaine Thompson, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Idaho, Eastern Division.

Filed December 23, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10928

THEODORE ROMAINE THOMPSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD FOR PRINTING

Appellant hereby adopts as the points upon which he intends to rely on appeal, the statement of points appearing in the transcript of the record herein, which are the same points as set forth in his Assignment of Errors, also appearing in the transcript herein.

Appellant hereby designates the entire record as

certified to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit for printing in the transcript.

Dated at Portland, Oregon this 3rd day of January, 1945.

DELLMORE LESSARD

Attorney for appellant.

State of Oregon,

County of Multnomah—ss.

I, Dellmore Lessard, being first duly sworn, say: That I am the attorney of record for the appellant in the above entitled cause. That John A. Carver is the United States District Attorney for the District of Idaho, and is the attorney for the appellee herein. That the office of said John A. Carver is U. S. Court House, Boise, Idaho. That there is a regular communication daily by mail between my office in Portland, Oregon and Boise, Idaho. That on the 3rd day of January, 1934, I served a copy of the above by depositing said copy in the post-office at Portland, Oregon, inclosed in a sealed envelope, addressed to said John A. Carver at the address aforesaid, and prepaid the postage thereon.

DELLMORE LESSARD

Sworn to and subscribed before me this 3rd day of January, 1945.

[Seal]

ALBERT A. ASBAHR

Notary Public for Oregon.

My Com. Exp. Oct. 27, 1947.

[Endorsed]: Filed Jan. 6, 1945. Paul P. O'Brien, Clerk.

No. 10928

**IN THE
United States Circuit Court of Appeals
For the Ninth Circuit**

THEODORE ROMAIN THOMPSON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

**Upon Appeal from the District Court of the United States
for the District of Idaho
Eastern Division**

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday,
September 17, 1945

Before: Stephens, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Dellmore Lessard, counsel for appellant, and by Mr. E. H. Casterlin, Assistant United States Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday,
September 27, 1947

Before: Stephens, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER WITHDRAWING OPINION, SETTING
ASIDE JUDGMENT AND RESUBMIT-
TING CAUSE

The opinion of this Court heretofore filed on the
5th day of April, 1946, in the above entitled matter

is withdrawn. The decision entered in accord with the referred to opinion is hereby set aside. The appeal is hereby submitted to the court for opinion and decision upon the oral argument made and the briefs heretofore filed upon the appeal and upon the briefs heretofore filed on the motion for a rehearing.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday,
October 4, 1946

Before: Stephens, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
JUDGMENT.

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,917

WESLEY WILLIAM COX,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 10,928

THEODORE ROMAINE THOMPSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeals from the District Court of
the United States for the District of Idaho

No. 10,942

Oct. 4, 1946

WILBUR ROISUM,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of
the United States for the District of Oregon

Before: Stephens, Healy and Bone,
Circuit Judges.

Stephens, Circuit Judge.

OPINION

These cases were heretofore decided, but upon petition of the United States this court set aside its decision and withdrew its opinion and ordered the cases resubmitted upon the original briefs and argument, supplemented by the briefs filed for and against the petition for rehearing.

Wesley William Cox and Theodore Romaine Thompson were indicted by a United States Grand Jury in the District of Idaho, Eastern Division, under the Selective Training and Service Act of 1940 as amended, 50 U.S.C.A. App. § 311. Wilbur Roisum was indicted by a United States Grand Jury in the District of Oregon under the same statute. Each of the inditees was tried, convicted and sentenced, and each has appealed to this court from the judgment and sentence. The three appeals are submitted to us for decision upon a consolidated brief and oral argument for appellants and upon separate briefs for appellee.

Each appellant, a registrant under § 302, was classified (§ 310) as a conscientious objector [§ 305 (g)], and was ordered to a civilian camp, there to perform such work of national importance

(§ 309a) as he should be directed to perform. After various happenings, which we need not here relate, each registrants proceeded to camp. Within fifteen or twenty minutes after arriving, Cox and Thompson left without permission and intentionally remained away. After Roisum arrived at camp, he was given a limited leave of absence and intentionally remained away after his leave had expired.

All requirements to reception in camp as selectees had been met. Unlike acceptance into the armed forces, which entails a ceremony of induction, whereby the registrant ceases to be a civilian, a conscientious objector undergoes no change in his status as a civilian by becoming a selectee in a camp.

Each appellant claimed that he had obeyed all administrative orders directed to him and that he was under no lawful restraint whatever, as he saw it, since his claimed status as a duly ordained Jehovah's Witness minister of religion exempted him from any training or service under the Act and from the jurisdiction of a board to issue any order directed to him. Section 305(d) acts to exempt "regular and duly ordained ministers of religion" from training or service but not from registration.

Appellants' claims as to exemption were at all times consistently, persistently and openly made by each registrant. These claims were the subject of competent proof to the boards through the registrants' questionnaires, and evidence was presented at board hearings that, although the registrants were conscientiously opposed to war by reason of

religious training and belief, they were ministers, and requests were made for classification as such. Notwithstanding all of this, say the appellants, the boards treated their claims as ministers, arbitrarily and capriciously, and proceeded to classify them as conscientious objectors.

At the trials all of the proffered evidence relevant to each registrant's claimed status as a minister was received by the courts, and as to each instance it was determined that there was substantial evidence before the boards upon which they based their classification. In each instance the court instructed the jury that they were not to consider such evidence for any purpose whatever. The evidence presented as to the showing to the boards was competent and substantial. In each case the appropriate steps were taken entitling the registrant to maintain his appeal.

It is settled that the defense in the trial under § 311 upon this phase of the case can only go to the jurisdiction of the board¹ or to the inquiry as to whether or not the board discriminated against the registrant or considered his case arbitrarily or capriciously. While the courts have the power to convict or acquit in accordance with the evidence on these issues, they have no power to try the issue of classification de novo. Since in each case under

¹Estep v. United States (No. 292) and Smith v. United States (No. 66), U.S.; Billings v. Truesdell, 321 U.S. 542 (1944); Falbo v. United States, 320 U.S. 549 (1944).

treatment in this opinion the evidence on the classification issue before the board was shown to be substantially in support of the classification found by the board, the court was not in error in instructing the jury to disregard it entirely.

As stated by Mr. Justice Frankfurter in his opinion, concurring in the decision but not in the opinion of the majority of the court in *Estep v. United States* (No. 292) and *Smith v. United States* (No. 66), . . . U.S. . . . (1946), the controversial doctrine of jurisdiction of fact, treated in *Crowell v. Benson*, 285 U.S. 22 (1932), is suggested. That is, since ministers of religion are exempted from any service, the registrant under trial for violating § 311 may show the fact to be that he is a minister of religion and not merely that the evidence before the board was in substantial support of the board's classification. It will be recalled that it was decided in the latter case and other similar cases² that findings of fact of an administrative agency which go to the jurisdiction of the agency and which affect constitutional rights are not conclusive and may be tried by the courts de novo. Where only statutory rights are involved, as in our cases (ministers of religion have no constitutional rights to exemption from military or other service), the findings of fact are final if substantially supported by evidence be-

²See *Ng Fung Ho v. White*, 259 U.S. 276 (1922); *Borax, Ltd., v. Los Angeles*, 296 U.S. 10 (1935); *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38 (1936).

fore the agency. See *So. Chicago Co. v. Bassett*, 309 U.S. 251 (1940).³

Finding no error in any one of the three cases treated in this opinion, the judgments are affirmed.

Affirmed.

[Endorsed]: Opinion. Filed Oct. 4, 1946. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,928

THEODORE ROMAINE THOMPSON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

JUDGMENT

Upon appeal from the District Court of the United States for the District of Idaho, Eastern Division.

³See also *Railroad Com'n. v. Rowan & Nichols Oil Co.*, 311 U.S. 570 (1941); *Local Draft Board No. 1 v. Connors* (CCA 9, 1941), 124 Fed. 2d 388; *Gudmundson v. Cardillo* (CCA D.C., 1942), 126 Fed. 2d 521; *Goff v. United States* (CCA 4, 1943), 135 Fed. 2d 610; *United States v. Messersmith* (CCA 7, 1943), 138 Fed. 2d 599.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Idaho, Eastern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered Oct. 4, 1946.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of
Thursday, March 20, 1947

Before: Stephens, Healy and Bone, Circuit
Judges.

[Title of Cause.]

ORDER DENYING PETITION
FOR REHEARING

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant; filed January 6, 1947, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

(Clerk's Note: For contents of petition for rehearing, see transcript of record in companion cause, Wesley Wm. Cox. vs. USA, pages 64 to 72.)

United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED
UNDER RULE 38 OF THE REVISED
RULES OF THE SUPREME COURT OF
THE UNITED STATES**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ~~sixty-five~~ (65) pages, numbered from and including 1 to and including 65, to be a full, true and correct copy of the entire record, excluding original exhibits, transmitted herewith, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 26th day of March, 1947.

[Seal]

PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 9, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. The case is consolidated for argument with Cox vs. United States and Roisum vs. United States, Nos. 1256 and 1258.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1453)